Give it coercive authority, and a poor court may, in some sort, serve your purpose. The danger is that it will not long be tolerated. Deprive it of coercive authority, and you must have an exceedingly good court, and it must keep, in its decisions, exceedingly close to the ultimate principles of justice.

DIFFICULTIES IN THE WAY OF A PERMANENT TRIBUNAL.

BY HON. GEORGE S. HALE, OF BOSTON.

I am asked to speak upon the difficulties of a permanent tribunal of arbitration and to suggest, if I may, any means of meeting those difficulties. I am glad that it is recognized that there are difficulties. I should be very sorry to have a body of brilliant men and intelligent women expect to march through a fool's paradise like an army with banners, and to see the walls of Jericho fall before them at the sound of their trumpets. There are difficulties that must be met, not by the harmlessness of the dove, but by the wisdom of the serpent.

Some of those difficulties present themselves to the mind of us all, and we attempt to meet them by various means. Those which are in their nature most practical in their application to the proposed scheme, are those upon which I venture to dwell. The difficulties which are to be met by preaching, by prayer, by suggestion, by argument,— the hostility of those who desire to keep difficulties alive, and controversy open,— for such there are — the Sangrados — who believe that the body politic must have periodical blood-lettings by war,— I think we may leave to the weight of argument and discussion. The great obstacle which weighs upon my mind is the difficulty of persuading the Great Powers of the world to submit themselves in advance to the control of anybody upon everything. It is not to be expected, and I am not sure that it is to be desired. If I were to appeal to you individually, Mr. President, to ask whether you would agree to submit every controversy that should arise between you and your neighbors to the best of men, would you not say, "I cannot abandon my moral right of determination upon my duties or my legal or intellectual or social, inherent rights. I must reserve something for myself as between myself and my God to pass upon"? I do not believe you can expect any great power to enter into an agreement to submit to compulsion. I cannot but feel that there should be a modification, a limitation, another form of presenting your object to those who are to be persuaded.

I prefer the term conciliation. I prefer a court of conciliation to a court of final arbitrament. I prefer a court which shall appeal to the highest elements of our nature, to our trust in each other, to our trust in man, to our belief in the brotherhood of man. I believe in following — if I may intrude upon the province of my ecclesiastical brethren — what I think may be considered as the political injunctions of the Saviour. "Moreover if thy brother shall trespass against thee, go and tell him his fault between thee and him alone; if he shall hear thee, thou hast gained thy brother. But if he will not hear thee then take with thee one or two more, that in the mouth of two or three witnesses every word may be established. And if he shall neglect to hear them, tell it unto the church; but if he neglect to hear the church, let him be unto thee as a heathen man and a publican." The first is negotiation, the second is conciliation; the third is the moral "boycott" of the world. "Let him be unto thee as a heathen man and a publican;" cast him out from the association of nations. That will be the punishment, that the compulsion.

Let me — since every man has a right to his plan — give you mine. I violate no confidence, I think, in saying that I ventured, at the meeting at Washington of the Committee on Resolutions, to propose a modification of the resolutions adopted there; and I believe that many of those who were present cordially agreed in the desire which I expressed. But they thought, no doubt, wisely, that it was not practical or judicious at the time to inject into a general form of resolutions, for which the unanimous acceptance of a large body was hoped, any distinctive or separate plan. Let me read you the resolution which I proposed, and let me allow myself, for fifteen minutes, some discussion of a plan founded upon the Scriptural injunction which I have stated to you:

Resolved, That it is expedient to combine with proposals for final arbitration an alternative or associated plan for courts of conciliation or conference, composed of equal numbers of representatives of each of the parties, to which they shall agree to present all material evidence within their knowledge and control bearing upon the subject in controversy and which shall recommend, without imposing any binding obligation on the parties, such action by either as in the opinion of such court or conference justice, equity and honor require,— or allowing such qualified submission to the permanent tribunal of arbitration if preferred.

I desire to propose an alternative, which consists in submitting to a tribunal which is accepted, in whose honor, in whose capacity, in whose knowledge of law, confidence is felt — in submitting to them, with a clean and open breast, all that either party can claim to rest upon. That done, can there be any doubt of the conclusion, or of the acceptance of that conclusion, or of the concurrence of the world in sustaining that conclusion?

Let me illustrate the value of such provision by the story, undoubtedly familiar to most of the lawyers here, which I may call "The Romance of the Maps."

During the negotiations with Great Britain in regard to the Northeastern boundary, Mr. Jared Sparks communicated to Mr. Webster the fact that he had found, before the negotiations, in the archives of the French Government, a letter from Dr. Franklin referring to a map showing the boundary by a strong red line, and a map which might be the same, bearing upon it such a line, which sustained the contention of the British Government. Mr. Webster did not disclose it to the British Government. That Government were at liberty to apply to France for an opportunity to search their archives and at some time, apparently, their agent did find the map there. I know no difficulty which confronts the honorable lawyer greater than when he is possessed of evidence which his position has afforded him, injurious to his cause, which his duty to his client forbids him to disclose, and which, yet, the higher justice demands should be disclosed to the tribunal which is to determine upon them. I do not criticise the conduct of our Secretary. He did not disclose that map. The treaty was made, the line fixed, the matter came up before the British Parliament for determination and the acceptance of those negotiations. The fact had been made public, and it was brought before them as an evidence of the manner in which Great Britain had been de-

prived of its rights, and of the injustice of the treaty which was to be adopted. Sir Robert Peel met that declaration by informing the Parliament that in the library of George III. was another map with another line, endorsed, as Lord Brougham in the House of Lords asserted, in the King's handwriting, "Boundary as described by Mr. Oswald," conforming to the claim of the *American* Government. Richard Oswald was the British Peace Commissioner. One met the other. I am happy to say, in justice to our negotiators and our position that Mr. Justin Winsor contends that the first map which alarmed Mr. Sparks, was not the map to which Dr. Franklin referred, but a boundary designated by Vergennes for the purpose of supporting a claim of the French Government in case Canada came back to them.

I offer this as an illustration of the wisdom of the provision which I venture to propose, that these negotiating parties should enter into an agreement, not to be bound, not to be controlled, not to submit or waive those rights which they believe they have; but that they should honorably and like true-hearted men, seeking justice and not victory, disclose every particle of evidence that they have, and that then a tribunal should pass upon it. No government would dare to say that it desired anything but justice, no government would dare to say that justice could be better promoted than by the clear and uncontrolled and free disclosure of every particle of evidence within their power, bearing upon the controversy. And could we then expect that there would be any doubt of the finding of a body selected as such a court would be selected or of the acceptance, by the parties themselves and by the world, of the conclusions thus reached?

Therefore, it seems to me that the first step should be in accordance with the resolution which I have read to you, and which I propose to submit to the Business Committee of this Conference, to be recommended by you if it shall meet your approval. That the negotiating or contracting parties should submit all their evidence, and that while they should not be absolutely bound by the action of the arbitrators, the result should be left to their sense of justice aud to the *consensus bonorum omnium*, the consent of all the good, who would stand by, looking on and judging impartially.

Let me hope, in conclusion, that the compulsion to be exercised shall not be by the storm of conflict, the shocks and flames of war, but by the still voice of Divine Power and of the moral judgment of the world.

PRACTICABILITY OF A PERMANENT INTERNATIONAL COURT.

BY HON. ROBERT EARL, EX-CHIEF JUSTICE OF THE COURT OF APPEALS OF NEW YORK.

We are substantially agreed, as I understand it, upon the fundamental idea that war should be obviated by resort to some peaceful method for the settlement of international disputes. We are all agreed, that there should be some international tribunal, to pass upon and to decide disputes that may arise between nations. We are substantially agreed, I think, that that tribunal should be permanent,—not that it should be at all times composed of members actually existing, but that it should be constituted by law, by treaty, so that its powers may at any time be invoked. I recognize fully that there are great difficulties to be encountered in accomplishing the purpose which we have in hand, but I have an abiding confidence that those difficulties will be surmounted. I have perfect confidence that the Anglo-Saxon race can solve all the difficulties with which it may be confronted.

The first practical matter to which I will call your attention has reference to the questions to be submitted to this tribunal. Theoretically I agree with Mr. Garrett that there is no conceivable question arising between nations which could not be submitted to peaceful settlement. If we can submit questions which are subjects of doubt, and controversy, we can certainly submit questions such as have been suggested by Senator Edmunds, of an unwarranted invasion of Canada or of Mexico, about which there could not be any doubt! But practically, I think it would be impossible to negotiate a treaty which would be ratified by the Senate of the United States, which provided in advance that all questions, of every conceivable kind, which might arise between nations should be submitted to the tribunal of which we are talking. Still the number of questions to be excluded need not be very great. I can hardly now call to mind a question, except one involving the national integrity, that could not with propriety be submitted. In our private relations, we agree in advance as citizens that everything involving our liberties, our honor, our character, our property, shall be submitted to the tribunals of our country, and they are decided to the entire satisfaction of the people and in the interests of the civilization of our age. Furthermore, where the practice of duelling prevails, it has always been customary to submit questions of honor involved on such occasions to the seconds, who have decided them. So I do not see anything in the nature of things which forbids the submission of a question of honor to any fair tribunal. Practically, we may have to limit the jurisdiction of the tribunal to comparatively few questions. But when the tribunal has been set up, it will not be long before all questions that may arise between the nations will be submitted to it. So that the practical difficulty can be solved, and easily solved, by agreeing to submit to such a tribunal a few questions, with the hope that in the near future its jurisdiction would be largely extended.

The next practical difficulty, which is more serious, is the constitution of this tribunal. I do not see any great difference between arbitration and a court. A permanent tribunal of arbitration can be set up just as easily as a permanent court, and it can be clothed with exactly the same attributes. It has been said here that there is difficulty in getting witnesses before arbitrators. In all the arbitrations that have ever taken place, I have never heard or read of any trouble in placing before the board of arbitration all the evidence essential for the decision of the case. It is said a board of arbitration cannot summon witnesses; how can an international court summon witnesses? You "can call spirits from the vasty deep." But will they come? Suppose a court sitting in London to issue a summons to some person in America as a witness, could he be compelled to appear? Suppose the witness lived in Spain or in Holland, could he be made to appear? By what kind of process? If a tribunal were set up such as we have in mind, a federal law could be passed in this country authorizing evidence to be taken before a commissioner, or authorizing some member of the court to come here and take evidence. But suppose the evidence was to come from some country not a party to